

## THE DEATH OF SOCIAL WORK IN A FAMILY COURT

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## THE STUDY

Social work as a profession has had a long-standing interest and concern for the well-being of families. Yet human services are delivered within an organizational context which both supports and constrains social workers in their concerns for families.

In reviewing the literature on the interface between organizations and the family, little has been written. However, one notable work is that of sociologist Paul Tappan entitled Delinquent Girls in Court, a book which examines the work of the juvenile court in New York City in 1957. Of particular interest is Tappan's detailed analysis of how judges and probation officers handled cases, using discretion to decide which girls were to be placed on probation and which sent to juvenile institutions. Tappan describes the process whereby professionals in the court reached their decisions. While being an excellent monograph on the work of the juvenile court, it also describes the practice of law and social work within an organizational setting.

Although the professions of law and social work in the juvenile justice system continue to receive attention, the work of professionals in the family court has not been analyzed. A review of the social science literature from 1964-1985 as reported in Sociological Abstracts indicates that no studies have been done regarding the functioning of the family court in general and more specifically, the role of professionals in service provision. Additionally, no full length history of the family court in this country has been done. This is unfortunate since professionals in the court make key decisions which affect the life course of individuals for years to come. A striking example is that in a custody battle, a judge can decide with which parent a child will live. On a more common but no less significant level, professionals in the court make important decisions regarding support, visitation, and paternity.

This study emphasizes several key elements. The first, that the organization where the professional practices both supports and constrains the professional in his/her work. Second, organizations have histories, organizations change over time, and this in turn shapes what professionals do. Third, while organizations are powerful entities in determining work practices, professionals in the course of their work, develop strategies for dealing with the inconsistencies which are present in all organizations.

Finally, what professionals are able to do as professionals is to a large extent based on the power which they possess in the organization to determine the conditions of their work. In the case of social work at the court studied, its inability to control its work environment led to its eventual demise. Some suggestions are made for improving social work functioning in human service organizations generally.

Each of these points just listed will be discussed in detail after the methodology used in the study has been discussed.

#### METHODOLOGY--DOING THE STUDY

On the basis of preliminary observations at the court and discussions with court personnel which included permission for the study, I realized that diverse and rich data was available at the court and that a suitable way to understand it was by means of a field study based on observations and interviews. Becker (1969) indicates that participant observation is the method of choice when the social scientist is interested in understanding a particular organization rather than demonstrating relations between abstractly defined variables. This type of research has theoretical relevance when not enough is known about the organization a priori to identify specific problems. Hypotheses are generated in the course of the research.

During the four month period of research at the court I interviewed four judges, seven social workers, and eight commissioners. (Commissioners are lawyers by training who function at the direction of the family court judges and are involved primarily in determining pre-judgment matters.) In addition, bailiffs, administrative personnel, and some receptionists were interviewed. Becker (1969) examined interviewing techniques in relation to participant observation. He noted that observation provides a rich experiential context which sensitizes the researcher to incongruous or unexplained facts. I might add that these incongruities can be explored within the interview. This was my experience in observing in courtrooms and hearing rooms, noting unexplained facts, and then following this up in subsequent interviews.

Denzin (1978) also commented on the relationship between interviewing and observation, noting that a good interviewer is by necessity also a participant observer. The interviewer participates in the life experiences of the respondent while observing the individual's report of himself or herself during the interview. Denzin believes that the good interviewer attempts to become a part of the social worlds of experience which are being studied.

Interviews were a crucial part of this study for it was from them that data about how professionals view their work

was obtained. Prior to my interviewing the professional personnel at the court, I formulated a list of questions which I believed would be helpful in eliciting responses regarding how professionals saw their work. However, the particular phrasing of questions and their order were redefined to fit the characteristics of each respondent. For example, questions took into consideration the fact that social workers, judges, and commissioners receive different professional training and hence their understanding of such things as intra-familial factors may vary. The form of interview used most closely approximated what has been called the focused interview. (Merton and Kendall, 1946) Some interview material was tape recorded and then transcribed but most of the material was recorded from extensive notes.

As I studied historical documents about the court, observed there, and interviewed participants, the volume of data grew continually, and about half way through the period of observation at the court I tried to impose meaningful order on this large amount of data. I continued to read about theories of organization, professional work, and people-processing or street-level bureaucracies. Gaps between what transpires at a formal level of an organization and what takes place on a micro level in service encounters within the organization were evident from my observations. I began to explore the rather murky literature regarding how organizational participants deal with social structure. I finally decided to use Scott and Lyman's (1968) concept of accounts meaning aligning actions, verbal explanations and/or justifications which social actors use to maintain order and continuity in a wide range of settings, including organizations. The lack of clear organizational goals at the court coupled with the ongoing need for professionals to make sense out of what they do while at the same time faced by the demand to process large numbers of cases within a limited time framework led to a range of accounts which professionals used to proceed with their work.

Based on my interviews and observations at the court I was led to believe that professionals used a variety of accounts to go about achieving some overall purpose or rationality in their work. In order to test this proposition, I constructed a typology of accounts which could be used as a basis for comparison of empirical cases. Data gathered up until this point seemed to indicate that accounts centered on people, organizational elements, and ideologies or belief systems. Each of these items seemed to have both internal and external dimensions so that six types of accounts could be used to compare and contrast professionals' views of their work.

For example, internal-personal accounts (1) refer to clients and litigants who are processed by professionals in their official organizational roles. External-personal

accounts (2) deal with persons outside the court who have an important role in facilitating the work of the professional--lawyers, for example. Internal-organizational factors (3) such as other professionals in the organization and their roles serve as another basis for accounts. External-organizational factors (4) such as another organization, the legislature, for example, serves a role in the work of the court professional. Internal-ideological accounts (5) deal with the belief systems in the family court and external-ideological accounts (6) deal with belief systems of the broader society and how these shape the work of service providers in the court. On the basis of interviews, coding was done, accounts were classified, and interpreted in light of how the account explained the organizational work which the professional was doing. An interpretive understanding of the data was being formulated. Wax (1967: p. 326) indicates that such an understanding requires grasping "the vast background of shared meanings through which the social world is organized into socially recognizable categories."

Here are some examples of accounts and their interpretation. An external-personal account from a court social worker is as follows:

There's a lot of politics involved.

There's a scouting report on us. Some attorneys have wealthy clients--they follow a certain procedure. The only thing we have going for us is rapport--make each client feel comfortable in telling you the truth. When the social worker goes to court, he has no one to back him.

Reasons are given here why social workers are less powerful than lawyers. Social workers are "used" by attorneys, by means of political manuevering. In addition, it is implied that for social workers, "rapport building" is based on creating an atmosphere of openness; however, attorneys' tactics are different. Finally, in the legal arena of the courtroom, the social worker is isolated because of his/her less powerful role as compared with that of the attorney. The account implies that structural factors, which give more power to the attorney, explain the more limited power of the social worker and the subsequent problems involved in performing his/her role.

Another way in which work is explained is by accounts referring to conditions external to the organization proper. In the following, contemporary institutions are seen as being non-supportive for persons in the throes of family conflict. This has had an impact on the work of judges in the court. As one judge stated,

Years ago we denied divorces, and people were scared of not getting a divorce. We had a sifting process--pastor, rabbis, and parents said, "Don't get a divorce." We're creating a society composed of people afraid of making permanent commitments--the court isn't equipped to deal with this...years ago there were structures to deal with this--churches.

The above makes clear that professional work in the court reflects a changing moral order. The court no longer actively attempts to preserve marriages but rather makes divorce easier by removing impediments to family break-up. The judge is no longer a potential reconciler but actually in his role, a facilitator of divorce.

In describing his work, a social worker uses an internal-ideological account to explain what he does in the court.

As an evaluator, you make judgments about them [clients]. It's hard because you just have yourself and your own experience--things that you think are important. In some instances you will find both parents are equally good...But essentially the work is all situational.

The problem in performing an evaluation is one of having few normative guidelines to reach a decision; every case becomes a new situation. The reason for this is that empiricism, or the gathering of facts, with no explicit framework (although there probably is an implicit one) is the ideology which guides the social worker in his/her role as an investigator. The empiricists are not the decision makers at the court; the power to interpret the facts rests ultimately with the judges and commissioners.

In spite of the fact that the court has no clearly articulated goals, its work goes on, as expressed most clearly in the accounts of professionals whose work is markedly shaped by the organizational niche in which they find themselves and by the need to manage large caseloads and move people along. If a consensus exists among professionals in the court it is around the issue of what will happen to the children of divorce; how the court will respond to their needs. Yet the evidence suggests that often these professionals view each other with distrust and suspicion when it comes to making child custody decisions. As one judge puts it in an internal-organizational account,

There are different talents among the social workers--sometimes I get their reports the day the case appears before me. The social workers have had political ups and downs and are probably underfunded. I suspect their

morale is bad. In addition, they're not well respected by the bar...I see their reports, and I've learned not to rely on them.

Thus, the major part of the study consisted of analyzing the accounts of professionals, comparing the accounts of legal and social work professionals and illustrating how these accounts serve to explain the difficulties involved in making professional work manageable in an organization with no clear cut goals and limited manpower resources. What I aimed for in reporting the work of professionals was a balance between theoretical concerns on the one hand and specific descriptions of the work setting on the other, what Lofland (1971) has referred to as analytic description.

Finally, Cicourel (1964:3) has observed that in field work "the observer is part of the field of action." One way to interpret this statement is that field work is experiential for the researcher. I found myself empathizing with clients who were seen in the court. For many it meant that sorrowful collapse of the dream of a stable family life; for others it meant welcome relief that a bad situation had ended and hope for a better future. For the professionals at the court, I developed respect and admiration as they sought to meet the demands of the individual case within the context of organizational and ideological constraints.

#### A HISTORY OF THE FAMILY COURT

While the analysis of accounts of professionals in the court is a major focus of this study, the family court today and social work within it can be understood most effectively if it is seen also within its historical context.

The first family court (then called the domestic relations court) was established in New York City in 1910. This court provided for the hearing of support cases separate and apart from criminal cases.

In 1914 the first integrated family court was established in Cincinnati, Ohio. Both divorce, post-divorce matters, and juvenile cases were processed by this court. Similar courts were established in St. Louis, Missouri in 1921; in Omaha, Nebraska in the same year, and in Des Moines, Iowa in 1924. In 1933 a family court which handled uncontested or default divorces was established in Milwaukee, Wisconsin.

The founding of these and similar family courts indicated the growing national concern that socio-legal matters which affected the family needed to be responded to. However, each jurisdiction decided how domestic relations matters as separation, divorce, custody, visitation, support, and paternity were to be handled.

In presenting a history of the Family Court of Milwaukee County, it is impossible to get an accurate picture of how

services were delivered in the court, say, ten or twenty years ago. However, paying particular attention to those issues which appeared to be most important, we can see how historical factors are instrumental in shaping current practice. As Scott (1983: 169) has noted "...when we observe a system at one point in time, we are viewing a cross section of elements that are the residues of diverse past experiences."

The Family Court of Milwaukee County was created by the Family Court Act of 1933. This law created a Family Court Division within the Circuit Court to handle exclusively domestic relations cases. Robert Hansen, who served as a judge and Chief Family Court Judge in Milwaukee county from 1963-1967, authored an article on the dimensions of divorce in which he indicated that Milwaukee county was the only community in the United States which has had experience with the three major systems used for handling divorce--the legal only system, the conciliation court, and the socio-legal court." (Hansen, 1966)

Prior to 1933, the founding date of the Family Court of Milwaukee County, the first of the three major systems was in place. This can be termed the "legal only system" meaning that the courts saw their duty to grant divorces in those cases where the party "proved" that a divorce should be granted. In this system the court did little or nothing to affect reconciliation.

In 1935, the Wisconsin legislature authorized the establishment of a Family Conciliation Department (now known as Family Court Counseling Services--social work) within the family court. Hansen (1966) dubs this type of court "the conciliation court"; in contrast to the legal-only system, discussed earlier, the conciliation court concept tried to affect reconciliation in those cases in which reconciliation seemed likely. MSW's at the court have always been involved in marital counseling and some pre-divorce counseling, but their most substantive focus has been on the impact upon children of family break-up. Social workers have been involved in custody evaluations and visitation matters on a regular basis at the court.

Other than what has just been mentioned in terms of the court's functioning until 1960, little is known. However, in 1960, as Hansen (1966) indicates, we enter the third phase: the socio-legal family court.

With the enactment of the statewide Wisconsin Family Code in the 1959 session of the Wisconsin legislature, Wisconsin became the first state to challenge, on a statewide basis, the traditional concept that a divorce action involved no more than the spouses. Under the Wisconsin Family Code, the state and the minor children became concerned and affected parties in the divorce action, although not specifically named in the action. With the code as the legal

basis, leaders of the family court in the 1960's proceeded to attempt to blend the legal and therapeutic viewpoints in dealing not only with divorce but with the welfare of children affected by divorce.

During the 1960's, in addition to the Milwaukee court, family courts in Denver, Toledo, and Cincinnati tried to blend the legal and the therapeutic within the framework of the court. Social workers continued to do marital counseling, but they also did increased pre-divorce counseling. The Wisconsin legislature had mandated that at least one person in a divorce action participate in a minimum of one counseling session to determine if reconciliation was possible. But the major role which social workers played in the socio-legal court was as advocates for children--through custody and other evaluations, the impact of divorce on the welfare of children was a chief concern.

Also in the 1960's, a community resources committee consisting of education, social welfare, and religious leaders was created to form cooperative links between the court and community agencies in terms of referral and to respond to unmet community needs in family matters.

Two prominent, nationally known family court judges in the Milwaukee court in the 1960's, Judge Robert Hansen and Leander J. Foley Jr. saw a major purpose of the court as assisting persons to achieve reconciliation if possible. Social workers were important in this effort, and as a result, the social work department doubled in size. Hansen and Foley were not without their detractors, however. Two other judges were appointed to the court, and their chief criticism was that not enough had been done to process more cases, more efficiently. Also on the horizon was an indication that no-fault divorce would soon become a reality.

In the era of reconciliation a good disposition was reconciliation, a child was best served through an intact marriage, and the law itself was best served when these results were achieved. With the advent of no-fault, the focus of concern shifted to financial issues generated by divorce although the welfare of children continued to be a concern. Weitzman (1985) has analyzed the impact of no-fault divorce in terms of its economic impact on both men and women. However, the impact of no-fault is hard to assess in the Milwaukee court. Most striking is that the court as an organization did not (or was not able to) develop a new purpose, to replace reconciliation. Issues of mediation and family reconstruction after divorce received little attention. In addition while no-fault was to take away the conflict in divorce, the court's professionals found that it was being replaced by financial and more custody struggles.

One other element in the history of the family court studied is of relevance to social work practice there. In 1982, Charles Grover (a pseudonym) was dismissed as director



of the social work department. Interviews and analyses of newspaper material suggest that Grover antagonized his own staff, judges, and lawyers in the community by his rigidity, including such items as a dress code, a complex system for checking out files, and strict punctuality. Social workers were accused of producing work of poor quality although there was little substantive proof for this. Grover failed to build working relationships with judges and lawyers in the community and with his own staff, and the price was high. The legal community put pressure on the County Executive and the Finance Committee of the Milwaukee County Board of Supervisors to radically re-structure the department. Two-thirds of the social workers in the department were re-assigned to other positions in the county civil service system. The director of the social work department was replaced, and instead of reporting to the Chief Family Court Judge as in the past, now reported to the Chief Family Court Commissioner, thus tending to weaken the influence of the director upon the presiding family court judge. Social work lost a great deal of credibility in the court.

#### PROFESSIONS IN THE COURT

While the court today continues its work--granting divorces, setting support, determining paternity, and setting guidelines for visitation--this work is done within an organization which has no clear cut goals. Rather, the primary emphasis is on people-processing--considering the individual case, handling matters in an ad hoc, situational fashion. Caseloads are higher for judges, commissioners, and social workers. While organizational work is difficult, the institutions of family, divorce, and the law which provide guidelines for professional decision-making, offer few norms as to what is a "right" decision.

As the accounts of professionals at the court are analyzed, the following is revealed. Judges' major work is to process people efficiently, educate people about the law, and make use of judicial discretion. Their work is done pretty much alone, without commissioners and social workers, but lawyers must be dealt with constantly. Judges see organizations as the state legislature as passing laws but having little interest in the day to day work of the court. Judges' work takes place against the back-drop of ideological forces which judges believe tend to erode commitment and discipline in society generally.

A recent audit of the Office of the Family Court Commissioner indicated that the commissioners as a whole were inefficient in terms of case processing. The audit suggested certain procedures, such as double booking of appointments and a master calendar to increase the efficiency of the commissioners. In this recent audit the quality of work

which the commissioners do was never questioned. The chief judge has high praise for the commissioners' work. The accounts of their work which commissioners give when compared with judges and social workers indicate that it is the commissioners who seem to have the most problematic cases with which to contend. They see divorcing couples at first hearings when the trauma of impending divorce has just struck, and yet it is in this kind of atmosphere where commissioners must set the rules under which the divorcing couple will live. In contrast, by the time the judge sees the couple, in many instances the trauma has eased, and the couple can more easily handle their feelings. If first hearings are often problematic because of emotional volatility on the part of the divorcing couple, enforcing post-divorce decrees is equally difficult work for the commissioners.

In reviewing social workers' functioning at the court, several points are worth noting. First, social workers view the intrinsic problems of clients as difficult to manage organizationally since these problems are presented in an unpredictable fashion, frequently requiring quick intervention. A chief task of the social workers is to organize these problems, in the areas of custody and visitation, for example, so that other professionals at the court can make decisions about them. In contrast to judges and commissioners who express concern about the number of cases processed, social workers are less concerned about numbers of cases, but more concerned about time spent in preparing cases for judicial processing or else applying therapeutic interventions so that further judicial processing is unnecessary.

Second, by far the greatest number of accounts presented by social workers deal with how their organizational work life is shaped by their lack of power and lack of access to judges and commissioners. Yet social workers at the court did little to try to remedy this situation by the development of strategies of change which will be discussed shortly.

#### THE DEATH OF SOCIAL WORK IN THE COURT

A considerable amount of time has been spent in analyzing the family court under study as a complex organization shaped by historical forces. Although having lost a unidimensional rationality in terms of a reconciliation focus, the work of the court continued as illustrated in the accounts of professionals. However, social work's 51 year old history in the court came to an abrupt end in 1986.

In mid-year 1986 it was announced by an assistant director of the Milwaukee County Department of Social Services that the social work department of the family court

would be eliminated, and that the personnel in the department would be assigned to other positions in the county civil service system. The assistant director went on to indicate that the Department of Social Services needed to conform to the requirements of the Gramm-Rudman-Hollings deficit management act, and that since the social work department at the court had run a deficit for several years, it was decided that cuts should be made there. A fee for social work services at the court had been in place for some time along with county support but deficits mounted with no measures taken to deal with the deficit. Representatives from community agencies are now working with the Chief Family Court Judge and Chief Commissioner to see how social services can be provided for families seen at the court.

There was no concerted effort on the part of judges, commissioners, and social workers to save Family Court Counseling Services. One reason for this was that the Chief Social Worker had left the department in January, 1987, taking an early retirement for medical reasons. He was not replaced, and so the department was without leadership.

However, and more importantly, judges and commissioners did little to intervene to save social work presence in the court. Perhaps social workers somehow did not present a convincing argument for their presence in the court. Emphasis on individual case services is extremely important in the court, but if social work was to have survived it had to do more to convince the court of its relevance. This becomes essential in those settings where social work is not the dominant profession. Being effective case managers or counselors and enhancing the work of other professionals, are important social work tasks, but social workers should also have looked at their organizational functioning to have retained their viability. For example, what programs could the social work staff have developed at the court to address the needs of families? Perhaps visitation workshops, mediation services, and groups for children of divorce. In addition, social workers in settings dominated by legal professionals need to actively state social work's relevance in terms of understanding the psycho-social implications of family break-up. This needs to be done not only on a case basis but also by some kind of regular, structured program reviews with legal professionals. Social workers also need to articulate an image of concerned, competent professionals to policy makers who can determine the fate to social work practice in human service organizations.

In summary, the following are suggestions for enabling social workers to maintain their viability in human service organizations: 1. Maintain professional competence in individual, case services. 2. Look at human service organizations as arenas in which professionals can develop programs to identify and respond to human need. 3. Share

with other professionals social work knowledge which can be used to make them more effective practitioners. Many legal professionals have only a basic knowlege of the behavioral and social sciences and their relevance to human problem solving. 4. Engage, if possible, in ongoing efforts with other professionals in the organization to assess the state of the organization in terms of strengths and weaknesses--use this knowledge to become systematically aware of problems. 5. As a professional and/or citizen convince policy makers about the relevance of social work practice.

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